

In re) Fair Hearing No. 11,570
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

The petitioner is a forty-three-year-old man with a seventh grade education and a work history of unskilled physical labor. In May 1993, a consultative psychologist determined that the petitioner has a full scale I.Q. of 73, and that he is functionally illiterate.

The petitioner also has a history of back problems. In September, 1992, he underwent a consultative physical examination by an internist who made the following findings and assessment:

Thoracic spine: there is severe tenderness in the lower lumbar area and severe pain over the left SI area. There is bilateral paraspinus spasm and pain, both of which are quite severe. Neurologic: motor normal. Sensory normal. Reflexes normal except for trace ankle jerks bilaterally. Straight leg raising negative on the right, positive on the left at 45 with increased low back pain. Toe touch: He misses his toes by 8 inches with markedly increased low back pain. Gait marked limp favoring left. Station broad based favoring left leg. Circulatory normal. Joint exam: PIPs, MCPs, wrists, elbows, shoulders, hips and knees normal. Range of motion without pain. He puts on his shoes and socks with

significant difficulty.

- A: 1. Severe low back pain with radiation down the left leg, possibly suggestive of herniated disc with associated severe muscular spasm in the back.
2. 60 pack year history of cigarettes.

X-rays taken at that time revealed "early osteophyte formation on the left at 3-4. Unilateral articulation of L-5 to the sacrum on the left. No other pathology seen".

The petitioner underwent a consultative orthopedic examination in November, 1993. The findings and impression of that examiner are as follows:

On physical exam, the patient is a thin male looking older than his stated age. His height is 5'9", weight 142. Blood pressure is 112/64. Pulse is 72. He has an antalgic gait on the left. He did have some difficulty going from sitting to standing and getting on the exam table. He had difficulty turning over. His spine is nontender, but he was tender to palpation over the left posterior iliac crest and over the left ST joint. Range of motion of his lumbar spine: Flexion 60 with fingers 12" from the ground.

Extension is 0 . Lateral bending is 30 each with pain going to the left. SLR on the right 60, left 45 with Bragard sign negative. DTRs in the lower extremities are normal. Toes are downgoing. Motor exam was normal. Sensory exam was difficult to interpret although he may have slight decreased pinprick over the lateral right foot and calf. He had discomfort with extension of the left hip. When asked to squat, he had pain in his low back. He had difficulty getting up from a squatting position.

There were no x-rays to be reviewed. I did have an X-ray Report from Rutland Regional Medical Center of the lumbosacral spine which stated that he had early osteophyte formation at L3-4 and an asymmetrical articulation of L5 to the sacrum on the left. Other records were reviewed.

Impression: MECHANICAL BACKACHE, CHRONIC.

The patient has never had an adequate workup nor any medical or physical therapy treatment. With his persistent symptoms for such a long period of time, it might be worth considering doing a CT Scan of L3 to S1, including the SI joints to be sure there is nothing treatable there. Also, he may benefit from one of the NSAIDs.

In his present condition, I do not feel that he can do any job which would involve any lifting or picking up of objects from the ground. If he did have a job, he would have to have the option of changing position frequently. His educational background is going to make it very difficult for him to find a job that would fit these restrictions.

Based on the above reports, which are uncontroverted by any other evidence in the record,¹ it is found that since at least September, 1992, the petitioner has been unable to engage in any work activity requiring any substantial lifting (more than 10 pounds), bending and prolonged sitting or standing. Considering the petitioner's limited mental abilities, this dictates a finding of disabled (see infra).

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any

¹A chiropractor who saw the petitioner two times in 1992 opined that the petitioner should be able to do "light work when recovered." It was he, however, who recommended that the petitioner should be examined by an orthopedist.

medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, uncontroverted medical evidence establishes that the petitioner, since at least September, 1992, has had severe back problems and has been unable to engage in any significant lifting, bending, and prolonged sitting and standing. This rules out all but a less-than-full range of "sedentary work" as it is defined in the pertinent regulations. 20 C.F.R. § 416.967(a).

As also found above, the petitioner's I.Q. is 73, that he is illiterate, and has a work history of only unskilled heavy physical labor. The regulations preceding the "Medical-Vocational Guidelines" (20 C.F.R. § 404, Subpart P, Appendix II) give the following example of an individual who should be found disabled:

An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

The petitioner fits this example exactly. Therefore, the Department's decision is reversed.

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